

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on March 16, 2005 in Room 313-S of the Capitol.

All members were present except:

Jim Ward- excused
Michael Peterson- excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Randy Hearrell, Kansas Judicial Council
Melissa Wangemann, Office of Secretary of State

The hearing on **SB 258 - statutory & legal forms to be set forth by the Kansas Judicial Council**, was opened.

Randy Hearrell, Kansas Judicial Council, informed the committee that the Judicial Council publishes many legal forms. They believe it would be wise to take most of the legal forms that appear in 4 & 4A out of the statute books because they are not being kept up to date. The forms will be available online at a later date. He proposed two technical amendments to narrow the bill (Attachment 1).

Melissa Wangemann, Office of Secretary of State, agreed with the recommendation of removing forms because it is easier to update them. She encouraged the Judicial Council to consider suggestions from national groups when revising the forms (Attachment 2).

The hearing on **SB 258** was closed.

The hearing on **SB 121 - charitable organizations & solicitations act; registration statement; audited financial statements**, was opened.

Melissa Wangemann, Office of Secretary of State, stated that the proposed bill updates one statute to alleviate filing audit burdens on small charities that collect less than \$100,000 in annual contributions. They have received complaints from small companies about the cost of audits are often 10% of their annual income (Attachment 3).

The hearing on **SB 121** was closed.

SB 258 - statutory & legal forms to be set forth by the Kansas Judicial Council

Representative Owens made the motion to report SB 258 favorably for passage. Representative Garcia seconded the motion.

Representative Pauls made a substitute motion to amend in the Judicial Council's proposed amendments. Representative Owens seconded the motion. The motion carried.

Representative Pauls made the motion to report SB 258 favorably for passage, as amended. Representative Owens seconded the motion. The motion carried.

SB 121 - charitable organizations & solicitations act; registration statement; audited financial statements

Representative Owens made the motion to report SB 121 favorably for passage. Representative Hutchins seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on March 16, 2005 in Room 313-S of the Capitol.

SB 7 - in child custody/residency, relevant factors include whether parent is residing with registered offender or person convicted of child abuse

Representative Jack made the motion to report SB 7 favorably for passage. Representative Kinzer seconded the motion.

Representative Pilcher-Cook made a substitute motion that the spouse must have actual knowledge and a duty to disclose. Representative Jack seconded the motion. Representative Kinzer suggested placing "knowingly" at the start of points 3 & 4 in New Section 1(a). The motion carried.

Representative Jack made the motion to strike subsection (d) to remove the rebuttable presumption, but still allow the court to consider being on the Kansas Offender Registration list as a factor. Representative Owens seconded the motion. Discussion centered on the possibility that it would not address a parent who is a registered sex offender, a registered sex offender who has children of his own and married a person who had children; and that there is no relationship in time as to when the person registered and the time that the court takes up the issue of custody. The motion failed 6-8.

Representative Kinzer made the motion strike on page 5, subsection (b) 1 & 2 and renumber. Representative Kiegerl seconded the motion. The motion carried.

Representative Pauls read the list of those who are required to register with the Kansas Offender Registration. Representative Watkins was not in favor of striking any of the offenses. Representative Pilcher-Cook made the motion to strike those who commit involuntary manslaughter off the list. Representative Kinzer seconded the motion. Representative Newton commented that judges can make the decision as to whether the crime they committed is cause for a person to lose custody. He reminded the committee that the legislature created that list for a reason. With permission of the second, Representative Pilcher-Cook withdrew her motion.

Representative Pauls made the motion to report SB 7 favorably for passage, as amended. Representative Owens seconded the motion.

Representative Loyd stated that he was voting no on the motion to report due to some concerns:

- those who are registered stay on the list for a period of 10 years, what happens after they go off the list
- it overlooks that we mandate those convicted of sexual offenses to receive treatment
- the courts are currently able to make the appropriate decision with regard to custody issues.

Representative Owens withdrew his second. Representative Watkins seconded the motion. Representative Crow stated that the proposed bill really will not change the way judges award custody. The motion carried.

The committee meeting adjourned at 5:00 p.m. The next meeting was scheduled for March 17, 2005 at 3:30 p.m. in room 313-S.



KANSAS JUDICIAL COUNCIL

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ADMINISTRATIVE ASSISTANT

MEMORANDUM

TO: House Judiciary Committee

FROM: Kansas Judicial Council - Randy M. Hearrell

DATE: March 16, 2005

RE: 2005 SB 258

The Judicial Council has undertaken a project to remove legal forms from the statute books and make the forms available on the internet and include the forms in a publication entitled Kansas Legal Forms. Senate Bill 258 removes legal forms from Volumes 4 and 4A of Kansas Statutes Annotated and directs the Judicial Council to prepare those forms and make them available.

The Council has recognized that legal forms which appear in the statute books are often not kept up to date and also present a difficult printing task for the Revisor of Statutes. The Council has experience preparing and making available forms as directed by statute. The Council currently prepares protection from stalking, protection from abuse and garnishment forms as directed by the respective statutes.

SB 258 is timely because the Revisor of Statutes will be republishing K.S.A. Volumes 4 and 4A in 2005 and SB 258 will prevent the reprinting of a number of forms in the new hardbound volumes.

The Council requests two technical amendments to the bill. As originally drafted, the language in sections 5 and 9 of the bill is overly broad.

1 ized representative of the agency having authority to consent to the adop-
2 tion of the child; and

3 (2) the child sought to be adopted, if over 14 years of age and of
4 sound intellect.

5 (c) The provisions of subsection (a) shall apply to consent in a step-
6 parent adoption, except that subsections (a)(3) and (4) shall not apply.

7 (d) A consent given by a parent, legal guardian or agency shall be in
8 substantial conformity deemed sufficient if in substantial compliance with
9 the form for consent contained in the appendix of forms following K.S.A.
10 59-2143 set forth by the judicial council.

11 (e) A consent given by a legal guardian, judge or agency shall set forth
12 the authority to execute the consent and shall be accompanied by docu-
13 ments supporting that authority.

14 Sec. 5. K.S.A. 59-2143 is hereby amended to read as follows: 59-
15 2143. The forms contained in the appendix of forms are sufficient under
16 K.S.A. 59-2111 through 59-2143. ~~The form of legal documents to be util-~~
17 ~~ized under the Kansas adoption and relinquishment act shall be set forth~~
18 ~~by the judicial council.~~

forms for consent and relinquishment

19 APPENDIX OF FORMS

20 RELINQUISHMENT OF MINOR CHILD TO AGENCY

21
22 NOTICE TO PARENT OR PERSON IN LOCO PARENTIS.

23 —This is an important legal document and by signing it you are perma-
24 nently giving up all custody and other parental rights to the child named
25 herein. You are to receive a copy of this document.

26
27 —I, _____, (mother, father,
28 person in loco parentis) of _____, a
29 minor child, state:

30 —The child was born on _____ at (place
31 of birth) at _____ m.

32 —I reside at _____, County of
33 _____ and State of _____.

34 —(If the relinquishment is by a person in loco parentis the relinquish-
35 ment shall have attached documents supporting the person's authority to
36 execute the relinquishment.)

37 —I am of the age of _____ years and was
38 born on _____.

39 —(If the relinquishing person is a minor, the relinquishment should set
40 forth that, prior to signing the relinquishment, the person has received
41 legal advice as to the relinquishment, from an attorney who does not
42 represent the agency.)

43 —I do hereby relinquish the child to (name of agency), which I under-

1 designation which it is). Notice of Hearing. The state of Kansas to all persons concerned.
 2 — You are hereby notified that a petition has been filed in said court by (name of petitioner
 3 and capacity in which said petitioner appears), praying for (state nature of petition and the
 4 nature of the judgment, order or other relief sought), and you are hereby required to file
 5 your written defenses thereto on or before the _____ day of _____, 19____, at
 6 _____ o'clock _____ m. of said day, in said court, in the city of _____, at which time and
 7 place said cause will be heard. Should you fail therein, judgment and decree will be entered
 8 in due course upon said petition.

_____, petitioner.

10 Sec. 7. K.S.A. 2004 Supp. 60-201 is hereby amended to read as fol-
 11 lows: 60-201. (a) The provisions of article 2 of chapter 60 of the Kansas
 12 Statutes Annotated, and amendments thereto, shall be known and cited
 13 as the rules of civil procedure.

14 (b) This article governs the procedure in the district courts of Kansas,
 15 other than actions commenced pursuant to the code of civil procedure
 16 for limited actions and governs the procedure in all original proceedings
 17 in the supreme court in all suits of a civil nature whether cognizable as
 18 cases at law or in equity, except as provided in K.S.A. 60-265, and amend-
 19 ments thereto.

20 Sec. 8. K.S.A. 60-258 is hereby amended to read as follows: 60-258.
 21 Entry of judgments shall be subject to the provisions of section 60-254(b).
 22 No judgment shall be effective unless and until a journal entry or judg-
 23 ment form is signed by the trial judge and filed with the clerk of the court.
 24 Where a judgment form is used it shall be substantially as follows:

25 _____, Plaintiff,
 26 vs. _____ No. _____
 27 _____, Defendant.

JUDGMENT FORM

29 On this _____ day of _____, 19____, judgment is entered as follows:
 30 (include here the judgment entered)
 31 _____
 32 _____

Judge

34 When judgment is entered by judgment form the clerk shall serve a
 35 copy of the judgment form on all attorneys of record within three days.
 36 Service may be made personally or by mail. Failure of service of a copy
 37 of the judgment form shall not affect the validity of the judgment.

38 Sec. 9. K.S.A. 60-268 is hereby amended to read as follows: 60-268.
 39 The forms contained in the appendix of forms are sufficient under this
 40 article and are intended to indicate the simplicity and brevity of statement
 41 which this article contemplates. ~~The form of legal documents to be utilized
 under the rules of civil procedure shall be set forth by the judicial council.
 Such forms provided by the judicial council are deemed sufficient and are~~

[Forms

1 *intended to be simple, concise and direct as contemplated by the rules of*
2 *civil procedure.*

3 Sec. 10. K.S.A. 60-302 is hereby amended to read as follows: 60-302.
4 The summons shall be signed by the clerk, dated the day it is issued, be
5 under the seal of the court and shall be ~~in substantial conformity with the~~
6 ~~forms for summons contained in the appendix of forms following K.S.A.~~
7 ~~60-269 deemed sufficient if in substantial compliance with the form set~~
8 ~~forth by the judicial council.~~

9 Sec. 11. K.S.A. 60-307 is hereby amended to read as follows: 60-307.

10 (a) *When permissible.* Service may be made by publication in any of the
11 following cases:

12 (1) In actions to obtain a divorce, maintenance or an annulment of
13 the contract of marriage if the defendant resides out of the state or if the
14 party with due diligence is unable to make service of summons upon the
15 defendant within the state.

16 (2) In actions brought against a person who is a nonresident of the
17 state or a foreign corporation having in this state property or debts owing
18 to the person sought to be taken by any of provisional remedies or to be
19 appropriated in any way.

20 (3) In actions which relate to or the subject of which is real or per-
21 sonal property in this state, if any defendant has or claims a lien or inter-
22 est, vested or contingent, in the property, or the relief demanded consists
23 wholly or partly in excluding the defendant from any interest in the prop-
24 erty, or in actions for partition or for foreclosure of a lien, if the defendant
25 is a nonresident of the state or a foreign corporation or if the party with
26 due diligence is unable to make service of summons upon the defendant
27 within the state.

28 (4) In all actions in which the defendant, being a resident of this state,
29 has departed from this state or from the county of the defendant's resi-
30 dence, with the intent to delay or defraud creditors or to avoid the service
31 of a summons, or hides in the state or county with that intent, or in an
32 action against a domestic corporation which has not been legally dissolved,
33 if the officers thereof have departed from the state or cannot be found.

34 (5) In any of the actions mentioned in this subsection, publication
35 service may be had on any of the following who are made defendants as
36 such: The unknown heirs, executors, administrators, devisees, trustees,
37 creditors and assigns of any deceased defendants; the unknown spouses
38 of any defendants; the unknown officers, successors, trustees, creditors
39 and assigns of any defendants that are existing, dissolved or dormant cor-
40 porations; the unknown executors, administrators, devisees, trustees,
41 creditors, successors and assigns of any defendants that are or were part-
42 ners or in partnership; the unknown guardians, conservators and trustees
43 of any defendants that are minors or are under any legal disability; and

RON THORNBURGH
Secretary of State



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TESTIMONY OF THE SECRETARY OF STATE
TO THE HOUSE JUDICIARY COMMITTEE
ON SB 258

MARCH 16, 2005

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to appear today in support of SB 258.

The first section of SB 258 relates to an expedited judicial process used to eliminate fraudulent liens from public record. This provision affects the Secretary of State because our office files several types of liens, most notably financing statements filed pursuant to the Uniform Commercial Code, Article Nine. This section allows a person to file a motion and obtain a finding of fact/conclusion of law from the court nullifying the fraudulent lien. This court order is then filed with the filing officer, who places it on record with the fraudulent lien.

The Secretary of State agrees with the concept of removing the forms from statute. Updating and revising the forms will be quicker and easier if the forms are not contained in statute.

The Kansas expedited judicial process and its forms were used as a model by the National Association of Secretaries of State and the International Association of Commercial Administrators to create a uniform expedited judicial process last year. This draft is currently under review by the National Conference of Commissioners on Uniform State Laws (NCCUSL), and their comments are expected this spring.

Our office was involved in the writing of this statute, and we continue to have dialogues with national organizations about improving the expedited judicial process and the forms. We wanted to note to the Judicial Council and this committee that we hope the Council will consider any suggestions from these national groups and our office before finalizing any revisions to the forms.

I appreciate the opportunity to speak today, and will answer any questions.

Melissa A. Wangemann, Legal Counsel
Deputy Assistant Secretary of State

House Judiciary
3-16-05
Attachment 2

RON THORNBURGH
Secretary of State



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TESTIMONY OF THE SECRETARY OF STATE
TO THE HOUSE JUDICIARY COMMITTEE
ON SB 121

MARCH 16, 2005

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to appear today in support of SB 121, a bill requested by the Secretary of State. SB 121 updates one statute contained within the Charitable Organizations and Solicitations Act to alleviate the filing burden on small charities that register with our office.

BACKGROUND INFORMATION

Charitable organizations register with the Secretary of State. They must file a financial statement with their registration, detailing the activities of their last fiscal year. In lieu of filing the financial statement, a charitable organization may file a copy of its income tax returns. Any organization that collects more than \$100,000 in annual contributions must also submit an *audited* financial statement from a CPA.

OBJECTIVE OF LEGISLATION

Charitable organizations receiving \$100,000 in contributions are relatively small, and an audit generally costs \$7,000-\$10,000. Thus, this filing requirement can cost up to 10% of their annual income. The smaller charities—those just over the \$100,000 threshold—often express their concern to our office that the cost of the audited financial statement is burdensome on them and depletes money that would otherwise be used for their charitable purposes. Although the public frequently requests copies of charity income tax returns, we rarely get requests for copies of the audited statement; in fact, we haven't received one in four years.

SB 121 increases the threshold amount requiring an audit from \$100,000 to \$500,000. The new amount is consistent with federal law, which requires organizations at the \$500,000 level to complete an audit in order to receive federal funds. To offset the loss of the audited information, the bill requires filing of income tax returns, which are currently filed at the discretion of the charity. Charities that do not file income tax returns—those receiving less than \$25,000 annually—would continue to file a financial statement on a form provided by the Secretary of State.

I appreciate your support of this legislation, and would be happy to answer questions.

Melissa A. Wangemann, Legal Counsel
Deputy Assistant Secretary of State

House Judiciary
3-16-05
Attachment 3